

REMARKS

Applicant has carefully examined the outstanding office action referenced above, and respectfully points out that it appears to be incomplete in several respects. First of all, applicant specifically requests the examiner to indicate whether or not she approves the proposed drawing change set forth in the first paragraph of the remarks section of applicant's prior filed amendment.

More importantly, the present office action fails to acknowledge the evidence of secondary indicia of patentability discussed in detail on page 5 of applicant's prior filed amendment. As explained therein, the invention is presently being infringed by at least two different parties. The facts of the infringement are set forth in applicant's Petition to Make Special and supporting papers. Widespread copying of this nature is one of the classic secondary indicia of patentability and such evidence must be given due weight in arriving at a determination of whether an invention is or is not obvious. *In re Sernaker*, 217 USPQ 1 (CAFC 1983). With this evidence, applicant has rebutted any prima facie case of obviousness made by the examiner. The examiner may respond to the evidence by determining that it has overcome the prima facie case of obviousness, or she may provide a reasoned explanation of why she deems it insufficient. However, the evidence may not be ignored. Accordingly, applicant respectfully requests the examiner to give this evidence its due consideration as required by controlling case law.

While the outstanding office action contains a number of rejections based on prior art, the thrust of applicant's arguments will concern only the basic obviousness

rejection over the Swiss Colony reference in view of the Stonoga et al. patent and the Gaines advertisement.

Applicant specifically traverses this rejection, pointing to the insufficiency of the Gaines advertisement to establish anything of relevance to the present case. First of all, the reference appears to be undated on its face. Thus, there is no evidence presently of record that this reference is prior art to the present invention. Furthermore, the reference is a printed sheet which includes a drawing of a dog biscuit that has written material printed on it. Of course, applicant's invention has nothing to do with messages printed on ordinary paper. Rather, applicant's invention concerns messages directed at pets which are formed on edible material.

It is impossible to tell from the Gaines reference, which appears to be advertising material, whether the dog biscuit pictured therein is actually a graphic representation of any such biscuit marketed by Gaines. That is, it is entirely possible that the message printed on the drawing of the biscuit in the ad was added to the printed material for commercial impact. The ad, itself, does not indicate whether this message, which actually isn't intended for the pet at all, really appears on the actual product.

Since the reference is ambiguous in this regard, no firm conclusion can be reached about what it teaches or doesn't teach. Accordingly, since the reference is defective in at least two ways - it is undated and, therefore, not necessarily prior art and it contains ambiguous teachings - combining it with the other two references could not possibly motivate one of skill in the art to combine and modify them as required to achieve applicant's invention.

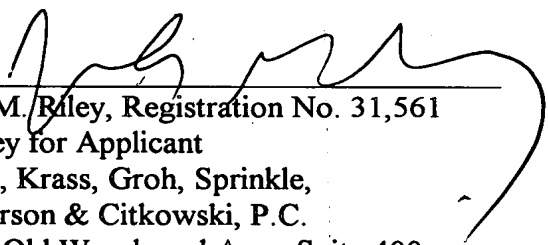
The present rejection is somewhat similar to that made by the examiner in the first office action. In applicant's first amendment, applicant extensively discussed both the Swiss Colony and Stonoga et al. references, and this discussion will not be repeated herein. Suffice it to say that neither one contains any teaching of making an animal edible greeting card, let alone one that contains a message directed at the pet formed thereon. Furthermore, neither one contains any teaching that would motivate one of skill in the art to take particular teachings from each separate reference and combine them in the manner suggested by the examiner. Neither one of these deficiencies is remedied by the Gaines advertisement for the two separate and distinct reasons discussed above. Accordingly, the present 103 rejection, like the one set forth in the first office action, must also fail and should be withdrawn.

The examiner will note that applicant has made a further amendment to claim 4 to require that the supporting section be formed along the entire bottom edge of the edible panel. To the extent that the Swiss Colony gift catalog can be read as disclosing any kind of a supporting structure on any of the chocolate greeting cards (and applicant continues to dispute this for the simple reason that the photographs are not clear enough to provide an unambiguous teaching), they clearly fail to disclose or suggest this additional feature. For this separate and additional reason, claim 4 is patentable over all of the prior art.

Since the pending claims describe an invention with a combination of features neither disclosed nor suggested by any permissible combination of the prior art, they define patentable subject matter. Accordingly, applicant respectfully requests the examiner to withdraw the outstanding rejections and allow the claims to issue.

The examiner should note that the office action was addressed to a member of applicant's representative's firm who is no longer employed there. Applicant respectfully requests that future correspondence be addressed to the undersigned attorney at the office address below. She may be contacted at the office number below should the examiner have any questions or comments.

Respectfully submitted,

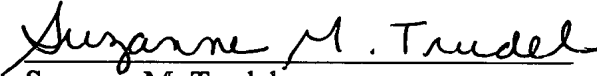


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JMR/gs

CERTIFICATE UNDER 37 CFR 1.8(a)

I hereby certify that this correspondence is being deposited with the United States Postal Service on the date indicated below with sufficient postage as First Class Mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231 on 7-22-99.



Suzanne M. Trudel